

DRAFT

A meeting of the New Hampshire Water Well Board was held on April 1<sup>st</sup>, 2004 at 9:30 am, in rooms 111& 112, 29 Hazen Drive, Concord, NH, 03302.

Present were: Terrell Swain, Chairman

Board members: Peter Caswell, Christopher Covell, Bart Cushing, Jeffrey Tasker and David Wunsch.

Staff: Rick Schofield and Tim Wilson

Chairman Swain brought the meeting to order at 9:35 and welcomed visitors and introduced members of the Board including the newly appointed Public Member Christopher Covell. Chairman Swain also introduced the New Hampshire Department of Environmental Services Commissioner, Mr. Michael Nolin. Commissioner Nolin accepted the invitation to sit with the Board beside Chairman Swain.

**Approval of Minutes**

Upon motion by Mr. Cushing, seconded by Mr. Tasker, the Board voted unanimously to accept the Minutes of the February 5<sup>th</sup>, 2004 meeting.

**Enforcement-Administrative Fines**

Chairman Swain opened the discussion by explaining to Commissioner Nolin that the adoption of administrative fines for enforcing violations has been a useful tool in raising the standards in the water well construction industry. However the membership has expressed concerns that, in some cases, a large disparity exists between the administrative fine schedule and administrative fine settlements reached between DES and the respondents. He added that if a respondent does not agree with a proposed fine, the licensee can appeal the fine to the Board for further consideration. Mr. Schofield provided the membership with a list of all enforcement actions taken by DES since the adoption of the administrative fine schedule in February of 2000. Mr. Schofield explained that decisions regarding settlement agreements are made collectively between himself, the respondent, his administrator (formerly Tony Giunta), and the DES Legal Unit. He added that the Board has expressed concern over fine reductions to him and has suggested that if the respondent does not agree with the fine, then it should be up to the respondent to appeal to the Board, and let that process dictate the actual imposed fine. Commissioner Nolin noted that he had come on board with the department in May of 2003, and of the list provided by Mr. Schofield, with the exception of one, he had not had any direct involvement in the listed enforcement actions. He also said that if he sees a fine that seems unreasonable he will ask questions of staff, and expressed his interest in being more involved in the process with the Board in the future.

Other members voiced their opinions.

Mr. Caswell stated that several fines were reduced to zero and felt that there should be a minimum fine administered for any enforcement action involving a proposed fine.

Mr. Cushing mentioned that the Board has never been a party to administering fines or the final recommendation in settlement. The industry knows now that fines are negotiable and in many cases

significantly reduced such that it undermines the threat of fines as a deterrent for poor workmanship. He believes that the fine schedule as it was adopted was fair and not intended for negotiation. He cited improper sealing of casing into bedrock as possibly the most significant violation as it relates to health and the protection of groundwater resources of the state from contamination. That of all violations, this should not be negotiated.

Mr. Tasker said that the Board has been historically lenient for habitual offenders and that going forth, fines should not be reduced for repeated violations.

Mr. Wunsch agreed with the opinions expressed thus far adding that the Board has been overly fair to licensees coming before the Board and given the benefit of the doubt, but when the Board sees a significant violation, the fine is set for good reason and should be respected.

Mr. Covell felt strongly that well reports need to be filed in a timely manner, implying that fines should be levied against contractors delinquent in reporting on time or at all. He stated that in consulting for the public, there have been cases where there were no records submitted for wells with serious yield issues and the homeowners have no recourse.

Commissioner Nolin asked pointedly what things he could do to help in the issues that have been discussed.

The membership felt that allowing respondents to file for appeal rather than rushing to settlement would provide the Board with the opportunity to consider the facts and make appropriate adjustments to a proposed fine. Mr. Wunsch brought to the Commissioner's attention that Mr. Schofield is the only DES employee that is working for the Water Well Program along with 30% of the time of one NHGS staff member. With that, the program is vastly understaffed with the personnel buried in paperwork and phone calls. No field inspections are possible with current staffing and no equipment is available to check wells for integrity. Looking at additional staff and equipment would go a long way to help protect the states drinking water resources. Mr. Cushing added that firm enforcement is what is needed to keep the industry in check and that overall the Board hears very few complaints given the amount of wells that are drilled each year. The compliance of the industry is very good overall but enforcement is needed to maintain that compliance.

Commission Nolin closed by stating that he wanted to see consideration given and leniency on first time offenders. That he will come before the Board any time it is felt he is needed, and lastly that he would speak with Mr. Wunsch, charging him with the responsibility of finding federal money to fund additional support for the Board.

The Commissioner left the meeting at 10:00 AM.

During the discussion Mr. Wunsch announced a major accomplishment, that the NHGS had brought the well inventory database up to date with all of the well reports that had been awaiting entry.

**Administrative Hearing:****Walton & Sansoucie / Young Bros. Pump Co., Inc**

Chairman Swain began by stating that in this case the original work was done by East Kingston Well and Pump, license #1715, and the repair work was completed by Young Bros. Pump Co., Inc., license # 141, both held by Michael Young. The original complaint was improperly filed against Young Bros. Pump Co., Inc., and it was suggested that the two parties agree that the complaint heard today would be against East Kingston Well and Pump. It was agreed upon by both parties that the complaint was against East Kingston Well and Pump. Michael Young requested clarification that the registry of complaints would identify license number 1715 in this case and not license # 141. The Board acknowledged that as fact.

Chairman Swain read the opening statements.

The complainants, Norman Sansoucie and Diana Walton were called to the table by the Chair and were sworn in under oath.

Mr. Schofield provided a chronology of events and list of documents for the record:

*1) November 24, 2003. Complaint Received from Diana Walton & Norman Sansoucie v. Young Bros Pump Co Inc.*

*In brief, The complaint stated that East Kingston Well & Pump Co had installed the original well and pump system 2 years ago and on November 19, 2003 they had no water in the home. They called Bill Young of Young Bros Pump Co to repair the problem because they knew that Michael Young (owner of East Kingston Well & Pump) had moved to Florida. When Young Bros pulled the pump they found the wires chaffed in several locations and the technicians informed them that there should have been at least one torque arrester installed. The complainants question why they should be responsible for payment of the repair bill if the damage was the fault of the installer.*

*2) December 19, 2003. Staff visited the property and interviewed Ms. Walton and Mr. Sansoucie. DES worked with the parties to reach a settlement agreement.*

*3) January 12, 2004. The response letter was received from the licensee, Mr. Michael Young, Sr., explaining that East Kingston Well & Pump Co installed the pump and that Young Bros Pump Co was called to make the repairs. Requesting that the complaint not reply to Young Bros Pump Co but to East Kingston Well & Pump Co.*

*4) January 30, 2004. Letter received from Mr. Young informing the Board that the parties had reached an agreement.*

- The bill was reduced by \$750*
- The homeowners would pay \$100/mth starting in April*
- A one year warranty would be provided on the repairs*

*5) February 5, 2004. Board meeting. The complainants rejected the settlement offer. Mr. Young was not present. The Board voted to schedule an administrative hearing to obtain all the facts about the complaint.*

Mr. Schofield referenced each of the file documents into the record.

The Chairman asked the complainants what their understanding of the verbal settlement was that had been agreed upon. Ms. Walton stated that the written settlement drafted by Mr. Young was different than the verbal agreement and they would not agree to the written version. She was also concerned that there were questions not yet answered satisfactorily. Specifically regarding the actual depth of the well, the use of torque arrestors, the pump depth setting, the discrepancies between the information on the invoice in contrast to what was told to them about the well construction, and that the wiring was not of the proper gauge.

Chairman Swain asked if a written contract existed for the original work that was done. The complainants said that there was no contract. It was noted that the drilled well was replacing a dug well that had gone dry. Also that excavation from the new well to the old well was done to accommodate the new water line (black PVC) to the house utilizing the existing 4 inch conduit from the dug well. A "ditch witch" was used to run the wires directly from the new well to the house. It was also found through questioning that when the pump was serviced, Mr. Sansoucie observed that the wiring was taped to the water line every 10 to 15 feet and the technicians showed him the chaffing on the wires.

There was discussion around the issue that any attempts to contact East Kingston Well and Pump by Mr. Sansoucie were responded to by personnel of Young Bros.

Chairman Swain excused the complainants. Michael Young was called before the Chair and sworn in under oath.

Questioned by the Board, Mr. Young stated that there was no contract for the original well construction nor was there a contract for the pump repairs that were recently done. He also stated that the name of the company was changed to Kingston Well and Pump at the time of a recent renewal. Mr. Young testified that torque arrestors were installed but did not comment on several questions posed to him by the Board regarding proper pump and wire sizing along with discrepancies in the invoice. Mr. Young stated that he was not present during the installation nor did he prepare the invoice. Chairman Swain made it clear that as the license holder he is responsible for day to day activities and should be able to answer these questions.

Chairman Swain called Andrew Dipaolo (technician for Young Bros.) before the Board and he was sworn in.

Mr. Dipaolo clarified that two torque arrestors were installed during the recent repairs, one just above the pump and another at 300 to 320 feet. He added that the pump was set at between 640 and 660 feet and that he did not install the original pump. The Chairman asked why the 10 gauge wire from the original installation was replaced by 8 gauge wire. Mr. Dipaolo answered that he was directed to do so by Bill Young who was at the office and assumed that it was to

match the wire size from the offset. Answering more questions, Mr. Dipaolo testified that there were no issues pulling the pump for repairs and in so doing found that a torque arrestor was set at the last length of pipe about 20 feet above the pump. He felt that the tank was undersized causing the pump to over cycle and that led to the wire chaffing. After further discussion the Board recessed for 10 minutes, encouraging the parties to come to an agreement.

David Wunsch left the meeting.

The hearing was reconvened at 11:08 with no agreement reached between the parties during the recess. Chairman Swain and other members suggested some settlement options for the parties to consider. After further discussion a settlement was agreed upon by the two sides. The settlement agreement requires the complainants to pay \$500 dollars for the repair work and Kingston Well and Pump will extend the warranty on the existing pump for 5 years from the date of original installation, September 24, 2001. Mr. Young agreed that he would draft the settlement within 10 days of the hearing.

Mr. Cushing stressed that the complainants file a letter to the Board stating that the settlement was reached and signed by both parties, and that Mr. Young send a copy of the settlement to the Board for it's file.

Upon motion by Mr. Covell, seconded by Mr. Caswell, the Board voted unanimously to continue the hearing until the next Water Well Board meeting.

#### Town of Raymond / Derry Well Company and Wragg Bros. Well Drilling Company

Mr. Schofield presented an overview of the history of the complaint to the membership and provided documents submitted by Jay Wragg as requested by the Board at the last meeting.

The documents requested were:

- 1) The job invoice;
- 2) Re-submittal of a revised non-conforming well location form with accurate information; and
- 3) Clarification of the configuration of the on-site septic system.

Chairman Swain asked if the documents submitted were adequate to comply with the Boards request. After discussion it was concluded that the submittals were sufficient.

Upon motion by Mr. Cushing and seconded by Mr. Tasker, the Board voted, by majority, to take no further action on the matter.

Mr. Cushing, Mr. Tasker and Chairman Swain voted in favor.

Mr. Covell and Mr. Caswell abstained, having not been present to hear the original complaint.

#### **Licensing**

##### New Applicants

The membership reviewed a list of new license applicants.

The application submitted by Mark Koenig was not accepted because he did not record his registered business name. The application was considered incomplete.

#### Fees For Individually Held Licenses

Chairman Swain voiced his opinion that the fees for individually held licenses are exorbitant, and that they are the same as for business. He expressed that these fees present a disincentive for individuals to become more invested in the industry and may hold back professional development.

Mr. Cushing stated that New York and Maine have the same fee schedule for individual or business licenses and that the NGWA already provides individuals with professional development opportunities.

Mr. Covell felt that if the licensing standards to be met were the same for the individual as for the business then decreasing the fee for the individual would be a good idea.

Chairman Swain finished by saying that in the future it is likely that legislation will require every driller to hold a license and that he would like to see a voluntary program established to be proactive toward that likelihood.

Other opinions were expressed by other members and no consensus was reached.

#### **Old Business**

##### 2003 Well Closure Survey Results

Mr. Schofield stated that a questionnaire was sent out to all 199 water well contractors licensed in NH, requesting information on well decommissioning in 2003 and thus far he has received 52 responses (25%). Of the 52 responses; 6 contractors reported a combined 40 decommissioned wells, 45 contractors reported 0 (zero) decommissioned and 1 contractor reported 75 monitoring wells decommissioned.

##### Local Well Regulations Questionnaire

Mr. Schofield told the membership that a second mailing of the private well questionnaire went out to the 154 towns that did not respond to the original letter. Responses already have been returned and as more towns respond the database will be updated. That information will be sent to the Association to refresh the listing of local requirements.

#### **New Business**

##### Water Systems Council Database

Mr. Schofield discussed the Water Systems Council ("WSC") Database which contains many errors and misinformation with respect to New Hampshire's Water Well Program. It was generally felt amongst the membership that it was not the responsibility of the Board to correct the mistakes of the WSC. It was

thought that sending a letter to acknowledge the errors was appropriate and to request that a link to the NH Water Well Board website be included on their own website to avoid issues of misinformation.

### Hydrofracturing Statistics

Mr. Schofield presented a histogram showing statistics related to hydrofracturing. Specifically, increased yield after hydrofracturing v. Depth. The information contrasted statistics for the period of records up to the year 2001 (1,089 records) and for the period of records up to the year 2004 (3,108 records). The more current data set shows that increased yields of  $\geq 4$  GPM after hydrofracturing extend over a greater range of depths; that is from 200 to 700 feet. Mr. Covell asked if there is any information from these records that identify if the yields were sustainable over time. Mr. Schofield said that there was none. There was no further discussion.

### National Groundwater Awareness Week March 14<sup>th</sup>-20<sup>th</sup> 2004

Mr. Schofield gave an overview of the publications that were issued by DES for the news media. He stated that a shortened version will be published in the DES Environmental Newsletter and several radio stations broadcasted that DES was urging the public to conduct water well check ups. He added that a checklist was established for inspecting the condition of your well and suggested that the checklist be posted on the Water Well Board website. The Board agreed.

### Turtle Caps/Grounding

Mr. Schofield reviewed the discussion from the February 5<sup>th</sup> meeting around the NEC requirement for bonding the pump circuit grounding conductor to the casing. Mr. Schofield brought to the table a well cover "Turtle Cap" made by the Baker Manufacturing Company and a letter from the company which showed and explained that the product design was engineered such that it met the NEC requirements. Upon inspection by Mark Hilbert, Senior Electrical Inspector, and the other State electrical inspectors, it was agreed that the new cover would meet the intent of the rule, however, the Fire Marshall's Office would not accept it because the product was not listed by a third party testing laboratory. Mr. Schofield suggested that the Board vote to accept the product as policy and subsequently adopt the installation by rule.

Upon motion by Mr. Cushing and seconded by Mr. Tasker, the Board unanimously voted to adopt a policy to accept the Baker Manufacturing cast iron Turtle Cap as approved to meet the requirements for electrical bonding.

Mr. Schofield was asked by the Board to contact Mr. Hilbert and make him aware of the approval.

### Well Siting Article

In the interest of industry outreach and education Mr. Schofield drafted an article on well siting which is to be published in the Association newsletter. He asked for any input on future articles.

Request for Exemption-Undue Hardship

Mr. William Fortune requested that the Board conduct a hearing to grant his petition for exemption from the required 3 yrs of experience needed under RSA 482-B:5 in order to obtain a pump installers license. His exemption is based on undue hardship under We 204.02. The membership had reviewed documents submitted by Mr. Fortune to substantiate his petition for exemption.

Chairman Swain called Mr. Fortune to the table and asked him to explain the reasoning for hardship. Mr. Fortune stated that working for a pump installer for 3 years to obtain a license is the hardship, precipitated by his inability to find a capable pump installer to work on the geothermal systems that he designs and sells. He expressed that he was fully qualified to install pumps despite not having 3 yrs of experience working for a licensed installer.

After further discussion regarding his experience, the Board denied Mr. Fortune's request for exemption.

Other New Business

Mr. Cushing proposed a motion that *"staff is directed to discuss any and all complaints, violations or compliance issues with the license holder only or licensee's designated legal council"*.

The motion was seconded by Mr. Caswell.

During discussion Mr. Cushing pointed out that when pursuing compliance issues, staff wastes valuable time because the qualified individual, the license holder, is unavailable for a variety of reasons, often considered "absentee owners". In those cases, information gathering is facilitated to lesser or greater extent from office or other personnel. Mr. Cushing felt that the license holder is the one that is ultimately accountable therefore they should be dealt with directly.

Mr. Schofield outlined his protocol for contacting drillers in compliance issues.

With discussion concluded, the Board voted unanimously to carry the motion.

Other New Business

Mr. Covell brought the issue of low yielding or dry wells and their impact on homeowners to the table. Although unsure if the Water Well Board was the right forum for discussion, he felt that well completion reports that record little or no water should be passed on to town officials to help them make decisions about occupancy.

Other sentiments expressed by the membership and staff were, although those are difficult situations for the consumer, it is currently not the job of the state to regulate private wells, but to regulate the well industry. The consumer tends to assume that because there is a drinking water well on a property that it is permitted by the state. Also that given more time, existing public outreach in its various forms should give the consumer the tools to find out about wells and water availability. It was also pointed out that disclosure statements for property transactions are required by law and that some Real Estate companies require signatures under the penalty of law that misinformation is a criminal offense.



There was no further discussion.

Other New Business

Mr. Cushing requested that staff follow up on reporting compliance for those individuals that were put on probation last year. Specifically Valley Artesian Well Co, Gordon Furbish Well Drilling, K Beebe Inc, and Roth Artesian Well Co.

The meeting was adjourned.

Rene Pelletier  
Water Well Board Secretary